

**Industrial Cooling Equipment  
Terms and Conditions**

The Client's attention is particularly drawn to the provisions of 13 (Limitation of liability).

**1. Interpretation**

The following definitions and rules of interpretation apply in these Conditions.

**1.1 Definitions:**

- 1 Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- 2 Business Hours:** the period from 8.30 am to 5.00 pm on any Business Day.
- 3 Client:** the person or firm who purchases the Equipment or Services or Equipment and Services from ICE, or as specified in the Order.
- 4 Commencement Date:** has the meaning given in 2.2.
- 5 Conditions:** these terms and conditions as amended from time to time in accordance with 17.8.
- 6 Contract:** the contract between ICE and the Client for the supply of Equipment or Services or Equipment and Services in accordance with these Conditions.
- 7 Control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of Control** shall be interpreted accordingly.
- 8 Deliverables:** the deliverables (if any) set out in the Order produced by ICE for the Client.
- 9 Delivery Location:** has the meaning given in 4.1.
- 10 Deposit:** the deposit amount set out in the Order or as notified to the Client by ICE.
- 11 Force Majeure Event:** has the meaning given to it in 16.
- 12 Equipment:** the Equipment (or any part of them) set out in the Order.
- 13 Equipment Specification:** any specification for the Equipment, including any relevant plans or drawings, that is agreed in writing by the Client and ICE, usually set out in ICE's quotation.
- 14 ICE:** Industrial Cooling Equipment Limited incorporated and registered in England and Wales with company number 02749695 whose registered office is at 101 Chadwick Road, Astmoor Industrial Estate, Runcorn, Cheshire, WA7 1PW.
- 15 ICE Materials:** has the meaning given in 8.1(h).
- 16 Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software,

database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**17 Order:** the Client's order for the supply of Equipment or Services or Equipment and Services, as set out in the Client's written acceptance of ICE's quotation, or overleaf, as the case may be.

**18 Price:** as defined in clause 9.1.

**19 Services:** the services, including the Deliverables, supplied by ICE to the Client as set out in the Service Specification.

**20 Service Specification:** the description or specification for the Services provided in writing by ICE to the Client.

**21 Total Charges:** all sums paid by the Client and all sums payable under the Contract in respect of Equipment and services actually supplied by ICE, whether or not invoiced to the Client.

**22 Warranty Period:** has the meaning given in 5.1.

1.2 The Contract is made up of the following:

- (a) The Order; and
- (b) The Conditions.

1.2 If there is any conflict or ambiguity between the terms of the documents listed in paragraph 1.2, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006.

1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.7 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.

- 1.8 A reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provisions.
- 1.9 A reference to **writing** or **written** excludes fax but not email.
- 1.10 References to clauses are to the clauses of these Conditions.
- 1.11 Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

## 2. **Basis of contract**

- 2.1 The Order constitutes an offer by the Client to purchase Equipment or Services or Equipment and Services in accordance with the Contract.
- 2.2 The Order shall be deemed to be accepted when:
- (a) the Client issues written acceptance of the Order;
  - (b) the Client signs the Order; or
  - (c) the Client instructs ICE to perform the Services or behaves in manner consistent with such instruction,

at which point and on which date the Contract shall come into existence (**Commencement Date**).

- 2.3 Any samples, drawings, descriptive matter, design or advertising issued by ICE and any descriptions of the Equipment or illustrations or descriptions of the Services contained in ICE's quotation, website, catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Equipment and Services described in them. They shall not form part of the Contract nor have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.5 Any quotation given by ICE shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.
- 2.6 All of these Conditions shall apply to the supply of both Equipment and Services except where application to one or the other is specified.

## 3. **Equipment**

- 3.1 The Equipment is described in the Equipment Specification.

3.2 ICE reserves the right to amend the Equipment Specification if required by any applicable statutory or regulatory requirement, and ICE shall notify the Client in any such event.

3.3 ICE reserves the right to amend the Equipment Specification due to any Force Majeure Event (including if any Equipment became unavailable and/or delivery would be delayed by stocking issues), and ICE shall notify the Client in any such event.

#### 4. **Delivery of Equipment**

4.1 ICE shall deliver, or shall use its reasonable endeavours to arrange for the delivery of, the Equipment to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after ICE notifies the Client that the Equipment is ready.

4.2 Delivery of the Equipment shall be completed on the completion of unloading of the Equipment at the Delivery Location.

4.3 If ICE is to install the Equipment at the Delivery Location as set out in the Service Specification, the Client shall procure that a duly authorised representative of the Client shall be present at the installation of the Equipment. Acceptance by such representative of installation shall constitute conclusive evidence that the Client has examined the Equipment and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended (save as regards any latent defects not reasonably apparent on inspection). If required by ICE, the Client's duly authorised representative shall sign a receipt confirming such acceptance.

4.4 Any dates quoted for delivery of the Equipment is approximate only, and the time of delivery is not of the essence. ICE shall not be liable for any delay in delivery of the Equipment that is caused by a Force Majeure Event or the Client's failure to provide ICE with adequate delivery instructions or any other instructions that are relevant to the supply of the Equipment.

4.5 If ICE fails to deliver the Equipment, its liability shall be limited to the costs and expenses incurred by the Client in obtaining replacement Equipment of similar description and quality in the cheapest market available, less the price of the Equipment. ICE shall have no liability for any failure to deliver the Equipment to the extent that such failure is caused by a Force Majeure Event (including by non-delivery by any supplier of the Equipment) or the Client's failure to provide ICE with adequate delivery instructions or any other instructions that are relevant to the supply of the Equipment.

4.6 If the Client fails to accept delivery of the Equipment within three Business Days of ICE notifying the Client that the Equipment is ready, then except where such failure or delay

is caused by a Force Majeure Event or by ICE's failure to comply with its obligations under the Contract in respect of the Equipment:

- (a) delivery of the Equipment shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which ICE notified the Client that the Equipment were ready; and
- (b) ICE shall store the Equipment until actual delivery takes place, and charge the Client for all related costs and expenses (including insurance).

4.7 If ten Business Days after the day on which ICE notified the Client that the Equipment was ready for delivery the Client has not accepted actual delivery of them, ICE may resell or otherwise dispose of part or all of the Equipment and, after deducting reasonable storage and selling costs, account to the Client for any excess over the price of the Equipment or charge the Client for any shortfall below the price of the Equipment.

4.8 ICE may deliver the Equipment by instalments. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Client to cancel any other instalment.

## 5. **Quality of Equipment**

5.1 Subject to clause 5.6, ICE warrants that on delivery, and for a period of 12 months from the date of delivery (**Warranty Period**), the Equipment shall:

- (a) conform in all material respects with its description the Equipment Specification;
- (b) be free from material defects in design, material and workmanship;
- (c) be of satisfactory quality (within the meaning of the Sale of Equipment Act 1979); and
- (d) be fit for any purpose held out by ICE.

5.2 Subject to 5.3, if:

- (a) the Client gives notice in writing to ICE during the Warranty Period within a reasonable time of discovery that some or all of the Equipment does not comply with the warranty set out in 5.1; and
- (b) ICE is given a reasonable opportunity of examining such Equipment;

ICE shall, at its option, repair or replace the defective Equipment, or refund the price of the defective Equipment in full.

5.3 ICE shall not be liable for the Equipment's failure to comply with the warranty set out in 5.1 if:

- (a) the Client makes any further use of such Equipment after giving a notice in accordance with 5.2;
- (b) the defect arises because the Client failed to follow ICE's instructions as to the storage, installation, use, suggested repair or maintenance of the Equipment or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of ICE following any drawing, design or specification supplied by the Client;
- (d) the Client (or any third party acting on the instructions of the Client) alters or repairs such Equipment without the written consent of ICE;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- (f) the Equipment differs from the Equipment Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 Except as provided in this 5, ICE shall have no liability to the Client in respect of the Equipment's failure to comply with the warranty set out in 5.1.

5.5 These Conditions shall apply to any repaired or replacement Equipment supplied by ICE.

5.6 ICE may charge the Client, in accordance with clause 9, for the associated labour in repairing a product, which was not installed by ICE. If ICE is required to repair or move a product which was not installed or delivered by ICE:

- (a) the Warranty Period shall be a period of three months only from the date of when the repair service and/or movement of the product was completed; and
- (b) the warranty provided under this clause 5 shall only relate to such parts and/or services provided by ICE and will not extend to the entirety of the Equipment.

5.7 The Client may be able to purchase an additional maintenance contract with ICE, relating to the Equipment, which may include an extended warranty on parts or parts and labour.

5.8 ICE shall have no liability to the Client in respect of the Equipment in respect of the Equipment's failure to comply with the warranty set out in 5.1 if any person other than a representative of ICE adjusts, maintains, repairs, replaces, moves or removes the Equipment or any part of it, unless otherwise agreed in writing by ICE.

## 6. Title and risk

6.1 The risk in the Equipment shall pass to the Client on completion of delivery.

6.2 Title to the Equipment shall not pass to the Client until ICE receives payment in full (in cash or cleared funds) under the Contract, in which case title to the Equipment shall pass at the time of payment

6.3 Until title to the Equipment has passed to the Client, the Client shall:

- (a) not remove, deface or obscure any identifying mark or packaging on or relating to the Equipment;
- (b) maintain the Equipment in satisfactory condition and keep it insured against all risks for their full price on ICE's behalf from the date of delivery;
- (c) notify ICE immediately if it becomes subject to any of the events listed in 14.2(b) to 14.2(d); and
- (d) give ICE such information as ICE may reasonably require from time to time relating to:
  - (i) the Equipment; and
  - (ii) the ongoing financial position of the Client.

6.4 At any time before title to the Equipment passes to the Client, ICE may require the Client to deliver up all Equipment in its possession that has not been resold, or irrevocably incorporated into another product and if the Client fails to do so promptly, enter any premises of the Client or of any third party where the Equipment is stored in order to recover them.

## 7. **Supply of Services**

7.1 ICE shall supply the Services to the Client in accordance with the Service Specification in all material respects.

7.2 ICE shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7.3 ICE reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and ICE shall notify the Client in any such event.

7.4 ICE warrants to the Client that the Services will be provided using reasonable care and skill.

## 8. **Client's obligations**

8.1 The Client shall:

- (a) ensure that the terms of the Order and any information it provides in both the Service Specification and the Equipment Specification are complete and accurate;
- (b) co-operate with ICE in all matters relating to the Services;
- (c) provide ICE, its employees, agents, consultants and subcontractors, with access to the Client's premises, office accommodation and other facilities as reasonably required by ICE to provide the Services;
- (d) provide ICE with such information and materials as ICE may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) if instructed to do so by ICE, prepare the Client's premises for the supply of the Services;
- (f) obtain and maintain all necessary licences, permissions and consents (including, where relevant, obtaining planning permission) which may be required for the Services before the date on which the Services are to start;
- (g) comply with all applicable laws, including health and safety laws;
- (h) keep all materials, equipment, documents and other property of ICE (**ICE Materials**) at the Client's premises in safe custody at its own risk, maintain ICE Materials in good condition until returned to ICE, and not dispose of or use ICE Materials other than in accordance with ICE's written instructions or authorisation; and
- (i) comply with any additional obligations as set out in the Service Specification or the Equipment Specification or both.

8.2 If ICE's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):

- (a) without limiting or affecting any other right or remedy available to it, ICE shall have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations in each case to the extent the Client Default prevents or delays ICE's performance of any of its obligations;
- (b) ICE shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from ICE's failure or delay to perform any of its obligations as set out in this 8.2; and
- (c) the Client shall reimburse ICE on written demand for any costs or losses sustained or incurred by ICE arising directly or indirectly from the Client Default.



## 9. Charges

- 9.1 The price for Equipment and the charges for the Services (the **Price**) shall be as set out in the Order.
- 9.2 The price for the Equipment shall be inclusive of all costs and charges of packaging, insurance, transport of the Equipment, which shall be invoiced to the Client.
- 9.3 The charges for Services are to be calculated on a time and materials basis and the charges shall be calculated in accordance with ICE's daily rates (or half day rates, where applicable);
- 9.4 ICE shall be entitled to charge the Client for any expenses reasonably incurred by the individuals whom ICE engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by ICE for the performance of the Services, and for the cost of any materials.
- 9.5 ICE shall be entitled to charge the Client for any costs, expenses and/or prepayment reasonably incurred by ICE in connection with the Equipment (including in respect of the manufacturing of bespoke products, parts or materials, admin charges incurred by ICE from any manufacturer for return of Equipment and any other associated charges incurred by ICE to any manufacturer), and for the cost of services provided by third parties if the Client terminates the Contract after the Commencement Date but before completion of the Services.
- 9.6 ICE reserves the right to increase the price of the Equipment, by giving notice to the Client at any time before delivery, to reflect any increase in the cost of the Equipment to ICE that is due to:
- (a) any factor beyond the control of ICE (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (b) any request by the Client to change the delivery date(s), quantities or types of Equipment ordered, or the Equipment Specification; or
  - (c) any delay caused by any instructions of the Client in respect of the Equipment or failure of the Client to give ICE adequate or accurate information or instructions in respect of the Equipment.

## 10. Payment

- 10.1 ICE shall invoice the Client on or at any time after:
- (a) the Commencement Date;

- (b) on order, dispatch and/or delivery of any Equipment (and where Equipment is delivered in instalments, these may be invoiced and paid for separately); and
- (c) completion of delivery or completion of the Services (whichever is the later), in respect of the balance outstanding of the Price, or the whole amount of the Price (as the case may be).

10.2 The Client shall pay each invoice submitted by ICE:

- (a) within 30 days of the date of the invoice or in accordance with any credit terms agreed by ICE and confirmed in writing to the Client; and
- (b) in full and in cleared funds to a bank account nominated in writing by ICE, and
- (c) time for payment shall be of the essence of the Contract.

10.3 All amounts payable by the Client under the Contract are:

- (a) non-cancellable and non-refundable; and
- (b) exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**).

10.4 Where any taxable supply for VAT purposes is made under the Contract by ICE to the Client, the Client shall, on receipt of a valid VAT invoice from ICE, pay to ICE such additional amounts in respect of VAT as are chargeable on the supply of the Services or Equipment at the same time as payment is due for the supply of the Services or Equipment.

10.5 If the Client fails to make a payment due to ICE under the Contract by the due date, then, without limiting ICE's remedies under 14, the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this 10.5 will accrue each day at 2% a year above the Bank of England's base rate from time to time, but at 2% a year for any period when that base rate is below 0%.

10.6 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## 11. **Intellectual property rights**

11.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Client) shall be owned by ICE.

11.2 The Client grants ICE a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Client to ICE for the term of the Contract for the purpose of providing the Services to the Client.

## 12. Confidentiality

12.1 Each party undertakes that it shall not at any time, disclose to any person any confidential information concerning the business, assets, affairs, Clients, clients or ICEs of the other party or of any member of the group of companies to which the other party belongs, except as permitted by 12.2.

12.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this 12; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

## 13. Limitation of liability

13.1 References to liability in this 13 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

13.2 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

13.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Equipment Act 1979 or section 2 of the Supply of Equipment and Services Act 1982 (title and quiet possession); and
- (d) defective products under the Consumer Protection Act 1987.

- 13.4 Subject to 13.3, ICE's total liability to the Client shall not exceed an amount equal to the Total Charges.
- 13.5 The limit on ICE's liability under 13.4 shall not be reduced by any amounts awarded by a court or arbitrator, using their procedural or statutory powers in respect of costs of proceedings or interest for late payment.
- 13.6 Subject to 13.2 and 13.3, this clause 13.6 specifies the types of loss that are excluded:
- (a) loss of profits;
  - (b) loss of sales or business;
  - (c) loss of agreements or contracts;
  - (d) loss of anticipated savings;
  - (e) loss of use or corruption of software, data or information;
  - (f) loss of or damage to goodwill; and
  - (g) indirect or consequential loss.
- 13.7 ICE has given commitments as to compliance of the Equipment and Services with relevant specifications in 5 and 7. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Equipment Act 1979 and sections 3, 4 and 5 of the Supply of Equipment and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 13.8 This 13 shall survive termination of the Contract.

#### 14. **Termination**

- 14.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party not less than one months' written notice.
- 14.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of seven days after being notified in writing to do so;
  - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;

- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
  - (d) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 14.3 Without affecting any other right or remedy available to it, ICE may terminate the Contract with immediate effect by giving written notice to the Client if:
  - (a) the Client fails to pay any amount due under the Contract on the due date for payment; or
  - (b) there is a change of Control of the Client.
- 14.4 Without affecting any other right or remedy available to it, ICE may suspend the supply of Services or all further deliveries of Equipment under the Contract or any other contract between the Client and ICE if the Client fails to pay any amount due under the Contract on the due date for payment, the Client becomes subject to any of the events listed in 14.2(b) to 14.2(d), or ICE reasonably believes that the Client is about to become subject to any of them.
- 15. **Consequences of termination**
- 15.1 On termination of the Contract:
  - (a) the Client shall immediately pay to ICE all of ICE's outstanding unpaid invoices and interest and, in respect of Services and Equipment supplied but for which no invoice has been submitted, ICE shall submit an invoice, which shall be payable by the Client immediately on receipt;
  - (b) the Client shall return all of ICE Materials and any Deliverables or Equipment which have not been fully paid for. If the Client fails to do so, then ICE may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 15.2 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 15.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

## 16. Force majeure

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**). The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for one month, the party not affected may terminate the Contract by giving seven days' written notice to the affected party.

## 17. General

### 17.1 Assignment and other dealings

- (a) ICE may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Client shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of ICE.

### 17.2 Notices.

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- (b) any notice shall be deemed to have been received:
  - (i) if delivered by hand, at the time the notice is left at the proper address;
  - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
  - (iii) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

17.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this 17.2(a) the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

**17.4 Waiver.**

- (a) A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

**17.5 No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

**17.6 Entire agreement.**

- (a) The Contract constitutes the entire agreement between the parties.
- (b) Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

**17.7 Third party rights.**

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

**17.8 Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

**17.9 Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

**17.10 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.